

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

CARISSA NICHOLS,)
Plaintiff,)
v.) No. 1:11-CV-79 SNLJ
ALTERNATIVE OPPORTUNITIES, INC.,)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on defendant Alternative Opportunities, Inc.'s Motion to Compel and for Sanctions, #15, and Motion to Deem Admitted Defendant's First Request for Admissions, #23, both filed April 24, 2012. Plaintiff has failed to respond to defendant's motions, and the deadline for responding has passed.

I. Motion to Compel and For Sanctions

In its motion, defendant states that plaintiff has failed to comply with her discovery obligations in that (1) she has not completed her initial disclosures pursuant to Rule 26, which were due on October 3, 2011; (2) she has not responded to defendant's interrogatories, request for production, or requests for admissions, which were due on January 16, 2012. Plaintiff has also failed to produce documents she committed to produce at her deposition by March 16, 2012. Defendant requests an order compelling plaintiff to supplement her initial disclosures under Rule 26(a)(1)(A), to respond to defendant's outstanding discovery requests within 21 days, and to pay \$7,267.50 to account for the defendant's fees and expenses that were incurred by filing this motion.

Plaintiff's failure to meet her discovery obligations — and, indeed, her failure to respond at all to this motion — is troubling. The Court will compel the plaintiff to respond and, pursuant to Federal Rule of Civil Procedure 37(a)(5), to pay the defendant's fees and expenses. *See also*

Arnold v. ADT Sec. Servs., Inc., 627 F.3d 716, 722-23 (8th Cir. 2010) (affirming dismissal with prejudice and sanctions for discovery violations). The Court is mindful that Federal Rule of Civil Procedure 41(b) permits a court to dismiss a cause of action with prejudice “for a failure of a plaintiff to prosecute or comply with these rules or any court order.” Dismissal with prejudice is warranted “only in cases of willful disobedience of a court order or where a litigant exhibits a pattern of intentional delay.” *Arnold*, 627 F.3d at 723. Here, defendant has not asked for such an extreme sanction, but plaintiff’s behavior suggests a “pattern of intentional delay.” As a result, the Court will grant the defendant’s motion to compel and for sanctions, and plaintiff will further be ordered to show cause why the Court should not dismiss plaintiff’s cause of action with prejudice given plaintiff’s failure to comply with discovery --- or even respond to defendant’s motion.

II. Motion to Deem Admitted Defendant’s First Request for Admissions

Defendant served its First Request for Admissions on plaintiff on December 15, 2011. As with defendant’s discovery requests, plaintiff has not responded. Defendant even told plaintiff’s counsel on March 19, 2012, of its intention to file this Motion, yet plaintiff still did not respond. Again, plaintiff did not even respond to the instant motion.

Federal Rule of Civil Procedure 36(a)(3) states as follows:

A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

See also Quasius v. Schwan Food Co., 596 F.3d 947, 952 (8th Cir. 2010) (affirming district court’s grant of summary judgment where defendant’s requests for admission were deemed admitted). Plaintiff has failed to respond to the Requests for Admission, despite defense counsel’s reminders, offers of additional time, and March 19 suggestion that a Motion to Deem Admitted would be forthcoming. The Requests for Admission are deemed admitted.

Accordingly,

IT IS HEREBY ORDERED that defendant's Motion to Compel and for Sanctions, #15, is **GRANTED in part.**

IT IS FURTHER ORDERED that defendant's Motion to Deem Admitted Defendant's First Request for Admissions, #23, is **GRANTED.**

IT IS FURTHER ORDERED that plaintiff shall serve defendant with her supplemented Rule 26 disclosures, her responses to defendant's first interrogatories, and her responses to defendant's first request for production of documents by **July 2, 2012**. Plaintiff shall promptly notify the Court that she has complied with this order. Failure to comply may result in further sanctions, including dismissal of this action.

IT IS FINALLY ORDERED that plaintiff shall pay defendant's attorneys' fees and expenses in the amount of \$5,000.00 no later than July 2, 2012.

Dated this 18th day of June, 2012.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE